

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman  
Bankruptcy Judge  
Sacramento, California

January 14, 2014 at 9:31 a.m.

- 
1. [13-32901](#)-B-7 GREGORY/REBECCA WOHNOUTKA MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
11-21-13 [[15](#)]  
  
JPMORGAN CHASE BANK, N.A.  
VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtors received a discharge on January 7, 2014, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 3627 Keogh Drive, Reno, Nevada (APN 028-042-22) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make sixty-four (64) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intention to surrender the Property. The trustee has filed a report of no distribution.

The court will issue a minute order.

2. [12-38703](#)-B-7 MICHELE ANAYA MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
12-16-13 [[25](#)]  
  
AMERICAN HONDA FINANCE  
CORPORATION VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

January 14, 2014 at 9:31 a.m. - 1

The motion is granted in part. The automatic stay is modified as against the bankruptcy estate pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2008 Honda Civic (2HGFA55568H702633) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make two (2) post-petition installment payments. Also, movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a statement of non-opposition to the motion. The debtor received a discharge on February 4, 2013, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C).

The court will issue a minute order..

3. [13-33005](#)-B-7 MATTHEW/HEIDI COOLEY MOTION FOR RELIEF FROM  
SCF-1 AUTOMATIC STAY  
12-13-13 [[13](#)]  
VALLEY FIRST CREDIT UNION  
VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2007 Dodge Ram (VIN 1D7HU18287J505376) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make four (4) payments. Also, movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intention to surrender the Collateral. The movant alleges without dispute that the debtors have surrendered the Collateral to the movant pursuant to their statement of intention. The trustee has filed a report of no distribution.

The court will issue a minute order.

4. [13-34608](#)-B-7 PABLO/ROSA ALFARO  
JWC-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-16-13 [[11](#)]

TRANSPORT FUNDING, LLC VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362 (d)(1) and (d)(2) in order to permit the movant to obtain possession of its collateral, a 2009 Kenworth T2000 Tractor (VIN 1XKTDB9X99J229348) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make two (2) payments. The movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution.

The court will issue a minute order.

5. [13-34608](#)-B-7 PABLO/ROSA ALFARO  
JWC-2

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-16-13 [[17](#)]

TRANSPORT FUNDING, LLC VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtors pursuant to 11 U.S.C. § 362 (d)(1) in order to permit the movant to obtain possession of its collateral, a 2006 Wabash Trailer (VIN 1JJV532W26L972689) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make three (3) payments. The debtors have filed a statement of intention to surrender the Collateral. The trustee has filed a report of no distribution.

The court will issue a minute order.

6. [13-31213](#)-B-7 JASON/BREANNA BRANNON MOTION FOR RELIEF FROM  
CJO-1 AUTOMATIC STAY  
12-10-13 [[16](#)]  
FIRST HORIZON HOME LOANS VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtors received a discharge on December 6, 2013, and the automatic stay as to the debtors ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 1516 Mariposa Way, Lodi, California (APN 035-240-33) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make twelve (12) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution.

The court will issue a minute order.

7. [13-31022](#)-B-7 KATHLEEN DEEGAN MOTION FOR RELIEF FROM  
WSS-1 AUTOMATIC STAY  
12-17-13 [[32](#)]  
BANK OF AMERICA, N.A. VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

8. [08-22725](#)-B-11 BAYER PROTECTIVE MOTION FOR RELIEF FROM  
JHK-2 SERVICES, INC. AUTOMATIC STAY  
12-3-13 [[695](#)]  
FORD MOTOR CREDIT COMPANY,  
LLC VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. To the extent that it applies, the automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362 (d) (1) in order to permit the movant to proceed, pursuant to applicable non-bankruptcy law, to recover insurance proceeds resulting from the total loss of its collateral, a 2008 Ford Escape (VIN 1FMCU02Z78KA52847) (the "Collateral") to satisfy its claim including any attorneys' fees awarded herein. The 14-day period specified in Fed. R. Bankr. P. 4001(a) (3) is ordered waived. Except as so ordered, the motion is denied.

The debtor confirmed a chapter 11 plan in this case on January 3, 2011. The chapter 11 plan (Dkt. 652) provides for the movant's secured claim in Article IV, § 4.01 B. ii. as Class 1.1. The class is treated as unimpaired. The monthly installments on each vehicle loan, including the loan secured by the Collateral, are to continue as operating expenses not contingent upon Net Cash Flow. Except where the terms have been renegotiated, the terms and conditions of the pre-petition documentation remain in full force and effect.

Under Article IX of the plan, the debtor will not be discharged until completion of the plan: when all payments required by the plan have been made or the Plan Term (five years from the confirmation date of January 3, 2011, subject to an automatic one year extension if distributions to priority tax claimants have been less than \$500,000) expires. Under Article VIII, § 8.07, the assets of the estate remain in the post-confirmation estate for the duration of the plan.

Based on the foregoing, the automatic stay as to the Collateral remains in effect at the present time, post-confirmation. The movant alleges without dispute that the Collateral was involved in an accident on October 6, 2013, and that the Collateral was declared a total loss by the debtor's insurer. The movant alleges without dispute that it is named as the loss payee for the Collateral on the debtor's insurance policy. The foregoing facts constitute cause for relief from the automatic stay.

The court will issue a minute order.

9. [13-33826](#)-B-7 NICHOLAS/LYNDA CRUZ  
SRS-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-30-13 [[17](#)]

GREEN TREE SERVICING, LLC  
VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f) (2). Opposition may be presented at the hearing. Because the debtors have filed a statement of intention to surrender the Property (as that term is defined herein), the court issues the following tentative ruling.

The motion is granted in part. The automatic stay is modified as to the debtors and the estate pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 1704 Maywood Avenue, Manteca, California (APN 216-140-13) (the "Property")

and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a) (3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make three (3) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtors have filed a statement of intention to surrender the Property. The trustee has filed a report of no distribution.

The court will issue a minute order.

10. [13-32533](#)-B-7 STEVEN/DEBORHA BIAGIONI MOTION FOR RELIEF FROM  
RCO-1 AUTOMATIC STAY  
12-13-13 [[16](#)]  
OCWEN LOAN SERVICING, LLC  
VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as to the debtors and the estate pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) in order to permit the movant to foreclose on the real property located at 8338 Radford Street, Citrus Heights, California (APN 209-0375-003-0000) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a) (3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtors have failed to make seven (7) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution.

The court will issue a minute order.

11. [13-34536](#)-B-7 JEANNETTE STOWERS MOTION FOR RELIEF FROM  
JHW-1 AUTOMATIC STAY  
12-3-13 [[9](#)]  
GM FINANCIAL SERVICES, INC.  
VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as against the estate and the debtor pursuant to 11 U.S.C. § 362 (d) (1) and (d) (2) in order to permit the movant to obtain possession of its collateral, a

2013 Chevrolet Malibu (VIN 1G11F5RR1DF112092) (the "Collateral"), to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make three (3) payments. Also, movant alleges without dispute that there is no equity in the Collateral and the Collateral is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The debtor has filed a statement of intention to surrender the Collateral. The trustee has filed a report of no distribution.

The court will issue a minute order.

12. [13-26640](#)-B-7 DONNA/HARVEY BILLS CONTINUED MOTION FOR RELIEF  
CJO-1 FROM AUTOMATIC STAY  
8-23-13 [[48](#)]  
  
JPMORGAN CHASE BANK, N.A.  
VS.

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The movant withdrew the motion on January 10, 2014. The court treats the Voluntary Dismissal, etc. of the motion filed on January 10, 2014 (Dkt. 96) as a withdrawal of the motion.

13. [13-31640](#)-B-7 MARIO/REGINA DIAZ MOTION FOR RELIEF FROM  
MRG-1 AUTOMATIC STAY  
11-21-13 [[14](#)]  
  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part and dismissed as moot in part. As to the debtors, the motion is dismissed as moot. The debtors received a discharge on December 18, 2013, and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 745 Marsh Place, Fairfield, California (APN 0167-381-210) (the "Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make five (5) mortgage payments. Movant further alleges without dispute that there

is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution and a statement of non-opposition to the motion.

The court will issue a minute order.

14. [13-34950](#)-B-7 ELMA CABRERA MOTION FOR RELIEF FROM  
SW-1 AUTOMATIC STAY  
12-11-13 [[10](#)]  
WELLS FARGO BANK, N.A. VS.

**Disposition Without Oral Argument:** Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The movant withdrew the motion on January 10, 2014 (Dkt. 17).

15. [13-31553](#)-B-7 MICHAEL/ALISIA MOTION FOR RELIEF FROM  
RFM-1 SMITH-ANDERSON AUTOMATIC STAY  
11-20-13 [[13](#)]  
STERLING JEWELERS, INC. VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral consisting of miscellaneous jewelry described in Exhibit "A" to the motion (Dkt. 16 at 2) (the "Collateral"), at 12:01 a.m. on October 1, 2013, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

The debtors did not file a compliant statement of intention with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2).

The court will issue a minute order.

16. [13-32162](#)-B-7 DARREL BAKER MOTION FOR RELIEF FROM  
MJ-1 AUTOMATIC STAY  
11-27-13 [[13](#)]  
NATIONSTAR MORTGAGE, LLC VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 6432 Feliciter Way, Citrus Heights, California (APN 243-0430-033) (the



"Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make twenty-nine (29) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a report of no distribution and a statement of non-opposition to the motion.

The court will issue a minute order.

17. [13-32971](#)-B-7      ROBERT/FLORIDALMA BAILEY      MOTION FOR RELIEF FROM  
PD-1      AUTOMATIC STAY  
12-9-13 [[16](#)]  
WELLS FARGO BANK, N.A. VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted in part. The automatic stay is modified as to the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) in order to permit the movant to foreclose on the real property located at 750-752 Jewell Avenue, Yuba City, California (APN 53-191-004) ("Property") and to obtain possession of the Property following the sale, all in accordance with applicable non-bankruptcy law. The court awards no fees or costs. The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor has failed to make five (5) mortgage payments. Movant further alleges without dispute that there is no equity in the Property and the Property is not necessary to an effective reorganization or rehabilitation in this chapter 7 case. The trustee has filed a statement of non-opposition to the motion and a report of no distribution.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The court will issue a minute order.

18. [13-31874](#)-B-7      SONYA BELL  
DMB-1

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND/OR  
MOTION FOR A FINDING BY THE  
COURT THAT RELIEF FROM STAY IS  
NOT NEEDED  
11-5-13 [[16](#)]

DEBBIE DUFFIN VS.

**Tentative Ruling:** This matter continued from December 17, 2013. The court established a briefing schedule. The debtor filed a timely response to the movant's late-filed reply on December 31, 2013, as ordered by the court. The court now issues the following tentative ruling.

As to the debtor, the motion is dismissed as moot. The debtor received a discharge on December 18, 2013 (Dkt. 31) and the automatic stay as to the debtor ended on that date. 11 U.S.C. § 362(c)(2)(C). As to the estate, to the extent it applies the automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to proceed, in accordance with applicable non-bankruptcy law, to obtain possession of the real property located at 2750 Galaxy Way, Redding, California 96002 (the "Property"). The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. Except as so ordered, the motion is denied.

The termination of the automatic stay as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C) renders the debtor's opposition moot. The debtor does not have standing to oppose the motion on behalf of the bankruptcy estate. As to the estate, the chapter 7 trustee has taken no action with respect to the debtor's lease of the Property, either to assume or reject the lease, within the time specified in 11 U.S.C. § 365(d)(1). The lease of the Property is deemed rejected by the estate. The trustee has filed a report of no distribution. These facts constitute cause for relief from the automatic stay as to the estate.

As to the movant's request that the court find that relief from the automatic stay to allow it to proceed with an unlawful detainer action as to the Property was not required because the Property "never became property of the estate," the movant overlooks the fact that even though the Property may not be property of the estate, the continuance of an unlawful detainer action against the debtor (as opposed to the Property) is the continuance of a "judicial . . . action or proceeding against the debtor" for which relief from the automatic stay was required prior to the time that the debtor received her discharge. 11 U.S.C. § 362(a)(1).

The court will issue a minute order.

19. [13-34677](#)-B-7 JILL VANLIEW  
SW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-19-13 [[11](#)]

WELLS FARGO BANK, N.A. VS.

**Tentative Ruling:** The motion is dismissed as moot. The automatic stay terminated as to the movant's collateral, a 2008 Cadillac CTS (VIN 1G6DP57V080110251) (the "Collateral"), at 12:01 a.m. on January 10, 2014, by operation of 11 U.S.C. § 362(h), and the Collateral has from that date no longer been property of the estate.

There is no evidence that the debtor performed his stated intention (surrender) with respect to the Collateral within the time allowed by 11 U.S.C. § 521(a)(2)(B).

The court will issue a minute order.

20. [13-35281](#)-B-7 DAMIAN AVALOS  
DJR-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-30-13 [[14](#)]

SHERWOOD MALL, LLC VS.

**Tentative Ruling:** This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

21. [13-33688](#)-B-7 VICTORIA/RICKY MCDANIEL  
CW-1

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
11-12-13 [[20](#)]

CARL WHITESIDE VS.

**Disposition Without Oral Argument:** This matter continued from November 26, 2013. The court established a briefing schedule. The debtors did not file any opposition to the motion pursuant to the briefing schedule. The court deems this motion unopposed, and issues the following ruling.

The motion is granted to the extent set forth herein. As against the estate and the debtors, the automatic stay is modified pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in order to permit the movant to, pursuant to applicable non-bankruptcy law, take possession of the real property located at 6841 Woodbine Avenue, Sacramento, California (the "Property"). The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

The movant served the debtors with a three day notice to pay or quit on October 4, 2013 (Dkt. 23, p.5). The debtors did not cure the lease default stated in the three day notice, and movant filed an unlawful

detainer action in Sacramento County Superior Court, case no. 13UD08012, on October 9, 2013 (Dkt. 23, p.7). The state court action was halted by the filing of the debtors' bankruptcy petition on October 23, 2013.

Service of the three day notice and expiration of the time to cure terminated the lease. Cal. Civ. Code § 1951.2; 7 Miller & Starr, California Real Estate § 19:201 (3d Ed. 2004). Neither the estate nor the debtors have any remaining leasehold interest. Neither the estate nor the debtors have any equity in the Property, and it is not necessary for an effective reorganization. The movant alleges without dispute that the debtors have defaulted in lease payments. The pre-petition termination of the lease and the absence of opposition by the trustee shows that the trustee cannot administer the Property for the benefit of creditors. The foregoing constitutes cause for relief from the automatic stay.

The court will issue a minute order.

22. [13-34599](#)-B-7 THEDFORD WINCHER  
GMW-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
12-4-13 [[10](#)]

SHIMON KEREN VS.

**Disposition Without Oral Argument:** This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. As against the estate and the debtor, the automatic stay is modified pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in order to permit the movant to proceed, pursuant to applicable non-bankruptcy law, to obtain possession of the real property located at 594 Hawes Street, Manteca, California (the "Property"). The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is ordered waived. Except as so ordered, the motion is denied.

The movant alleges without dispute that the debtor is delinquent in payments pursuant to the terms of a month-to-month lease executed on August 7, 2011. The movant served the debtor with a three day notice to pay rent or quit on October 10, 2013. The debtor did not cure the lease default stated in the three day notice, and movant filed an unlawful detainer action in San Joaquin County Superior Court, case no. 39-2013-00303192-C1-UD-MAN, on October 22, 2013. The state court action was halted by the filing of the debtor's bankruptcy petition on November 14, 2013.

Service of the three day notice and expiration of the time to cure terminated the lease. Cal. Civ. Code § 1951.2; 7 Miller & Starr, California Real Estate § 19:201 (3d Ed. 2004). Neither the estate nor the debtor has any remaining leasehold interest. Neither the estate nor the debtor has any equity in the Property, and it is not necessary for an effective reorganization in this chapter 7 case. The movant alleges without dispute that the debtor has defaulted in lease payments. The pre-petition termination of the lease and the absence of opposition by the trustee shows that the trustee cannot administer the Property for the

benefit of creditors. The foregoing constitutes cause for relief from the automatic stay.

The court will issue a minute order.